

5679. (F.D.C. No. 41762. S. Nos. 81-664 M, 82-241 M.)

INFORMATION FILED: 9-23-58, S. Dist. Tex., against Ernest K. Keith, and Jack H. Glazer (partners in the partnership of Palms Pharmacy), Houston, Tex.

CHARGE: Between 5-7-57 and 11-3-57, *thyroid tablets* and *meprobamate tablets* were each dispensed once without a prescription.

PLEA: Nolo contendere by Keith to dispensing the *thyroid tablets*; and by Glazer to dispensing the *meprobamate tablets*.

DISPOSITION: 10-24-58. \$250 fine against each defendant.

5680. (F.D.C. No. 39200. S. Nos. 51-629 M, 51-641/2 M.)

INDICTMENT RETURNED: 1-10-57, N. Dist. Tex., against Thomas Guy Brown, Dumas, Texas.

CHARGE: Between 3-13-56 and 3-23-56, *dextro-amphetamine hydrochloride tablets* were dispensed twice and *dextro-amphetamine sulfate tablets* were dispensed once without a prescription from a practitioner licensed by law to administer the drugs.

PLEA: Not guilty.

DISPOSITION: On 2-11-57, the case came to trial before a jury and, on 2-13-57, the jury returned a verdict of guilty. The defendant was fined \$500, given a prison sentence of 5 months, and placed on probation for 4 years. The case was appealed to the United States Court of Appeals for the Fifth Circuit; and, on 1-3-58, that court handed down the following opinion (250 F. 2d 745):

TUTTLE, *Circuit Judge*: "This is an appeal from the conviction of a physician for the violation of provisions of the Food, Drug and Cosmetic Act that prohibits the *dispensing* of certain potentially harmful drugs, transported in interstate commerce, without a *prescription*.

"The evidence fully warranted the jury's finding that the appellant, a practicing physician in Dumas, Texas, sold to two Federal agents, whom he supposed to be truck drivers, three separate lots of dextro-amphetamine hydrochloride tablets¹ that had been shipped in interstate commerce; that prior to dispensing them Dr. Brown had not prepared or given them any prescription and had not physically examined either of them and had not questioned them or 'prescribed' a dosage or otherwise attempted to acquaint himself with either the physical condition or needs of either man.

"The statute under which the three-count indictment was brought makes illegal and punishable as for a misdemeanor, under circumstances here present, a violation of the following provisions of 21 U.S.C.A. § 353 (b) (1):

A drug intended for use by man which

(B) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such a drug;

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shall be dispensed only (i) upon a written prescription of a practitioner licensed by law to administer such drug, or (ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or (iii) by refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to be an act which results in the drug being misbranded while held for sale.

21 U.S.C.A. § 353 (b) (2).

¹ The testimony, denied by the accused, was to the effect that the agent Spivak obtained 1000 5-mg. tablets on March 10th, 1000 10-mg. tablets on March 22nd, and that, in the presence of Spivak, another agent, Keeting, received 1000 5-mg. tablets on March 23rd.